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January 6, 2020

Ms. Paula Wilson
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Submitted via email: paula.wilson@deq.idaho.gov

Re: DEQ Negotiated Rulemaking – Ore Processing by Cyanidation
Docket No. 58-0113-1901 (Negotiated Rule Draft No. 3)

Dear Ms. Wilson:

The Idaho Mining Association (IMA) appreciates the opportunity to provide the following comments to the subject draft rule.

IMA appreciates IDEQ's willingness to update minimum design criteria for cyanidation facilities based on best practices in other jurisdictions, particularly Nevada. As set forth more specifically below, IMA believes certain aspects of the current rule draft depart from these best practices. We are also concerned about certain water quality concepts that are set forth in the subject draft rule. Our specific comments on these issues are set forth below.

Section 200.04.b.iii (Subbase)

As pointed out in our letter of November 4, 2019, the proposed subbase rule is unnecessarily prescriptive, impractical and prohibitively expensive to comply with at most mine sites in Idaho. Moreover, the proposed rule departs from design requirements in other jurisdictions including Nevada. Indeed, the proposed rule is substantially more prescriptive than current requirements in IDEQ Cyanidation Rules. The only explanation offered by IDEQ during the rulemaking to support the more prescriptive subbase is that Oregon requires it (although we are unaware of any cyanidation facilities in Oregon) and certain "literature" supports such a subbase. If there is

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literature which suggests a 36 inch subbase is a minimum design standard, IMA would like the opportunity to review it as part of the negotiated rulemaking.

IMA believes a more appropriate approach is to follow Nevada rules which allow for alternative subbase options. See e.g. NAC 445A.437 and 438. See also Nevada DEP Response to IDEQ Questions, Response No. 3. The Nevada approach is protective of the environment and has a long proven successful track record in Nevada where over 60 facilities have been permitted.

Accordingly, IMA offers the following alternative language:

1. Section 200.04.b.ii

A subbase consisting of one of the following, or comparable layer approved by the Department:

1. Compacted soil layer with a minimum thickness of twelve (12) inches compacted sufficiently to achieve a coefficient of permeability less than or equal to 1×10^{-6} cm/s and prevent deformation or settlement that compromises performance of the overlying materials. The soil layer must be placed in a minimum of two (2) lifts, unless material testing demonstrates that a single lift can achieve the specified performance. Soil subbase shall be free of putrescible, frozen or other deleterious materials. The upper lift of soil shall not contain particles in excess of point seven five (0.75) inches (nineteen (19) mm) in diameter; provided larger particles may be allowed if consistent with the manufacturer's specifications for the overlying liner and approved by the Department; or
2. Geosynthetic clay liner or other geosynthetic materials providing resistance to passage of process water equal to or better than that provided by 12 inches of 1×10^{-6} cm/s permeability material; or
3. Compacted soil layer thicker than twelve (12) inches, of permeability greater than 1×10^{-6} cm/s, otherwise compliant with (1) and providing resistance to passage of process water equal to or better than that provided by 12 inches of 1×10^{-6} cm/s permeability material

2. Liner Requirements Section 200.04.b.iii

Insert "LLDPE" after "HDPE"

LLDPE liners have been determined by the state of Nevada to provide equivalent protection to HDPE liners. See NDEP Response to the IDEQ Question Nos. 2 and 3.

Sections 201.02, 202.01a and c, and Section 204.01a.

Strike the references to "HDPE" as it is redundant to 200.04.b.iii.

3. Definitions .007

IMA believes it would be appropriate to include all definitions in the next draft (including current definitions in the existing rule) to allow for easier review of the proposed rule.

IMA also believes it would also be appropriate to define the terms “geosynthetic clay liner”, “primary liner”, and “secondary liner” as those terms are not defined in the rule.

4. Water Quality Provisions

a. Section 001.02.b

IMA believes the first sentence in the proposed rule is unnecessarily prescriptive and should be deleted. Compliance with a permit does ensure that a facility is designed in accordance with best practices in the industry which affords some protection under Idaho’s Groundwater Rule, point of compliance provisions for mining operations and potentially other provisions of state law. Therefore, IMA believes its suggested language below strikes the appropriate balance related to legal protection allowed under a permit while not allowing unauthorized discharges to the environment.

IMA believes this provision should be reworded as follows:

“Compliance with a permit issued under these rules does not release the permittee from liability for any unauthorized discharge to or any unauthorized degradation of waters of the state caused by the facility.”

b. “Process Water” and “Other Pollutants”

The existing rules proposed definition of “process water” focuses on liquids introduced into the cyanidation process. See IDAPA 58.01.13.007.24. IMA believes the focus of the Rule should be solely on the cyanidation process which is consistent with Idaho Code 39-118A. It appears certain provisions in the rule and proposed rule attempt to address other pollutants that may or may not be associated with process waters. Particular provisions in the rule that create this ambiguity are the definition of “land application” IDAPA 58.011.13.007.10, and sections 200.03 and 200.05.

IMA is not advocating that other pollutants not be regulated as IDEQ has ample authority to regulate other pollutants releases from mining operations unrelated to process water. Rather the focus of the rule should be on design criteria for facilities that contain or use process water. Therefore, the rule should clarify that it only applies to process water.

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Thanks again for the opportunity to comment on the subject draft Rule. We look forward to working with IDEQ over the next few months to allow for publication of a proposed rule in the spring of 2020.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. J. Davenport", with a large, sweeping flourish at the end.

Benjamin J. Davenport